

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH R. LOWERY and CONSTANCE
LOWERY,

UNPUBLISHED
August 26, 1997

Plaintiffs-Appellants,

v

No. 196110
Wayne Circuit Court
LC No. 94-435758-NI

CLAUDE DALE MITCHELL and BATESVILLE
CASKET COMPANY, d/b/a LINCOLN CASKET
COMPANY,

Defendants-Appellees.

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Plaintiffs appeal by right summary disposition, predicated on the Fireman's Rule, in this negligence action arising from a motor vehicle collision. This case is being decided without oral argument pursuant to MCR 7.214(E).

Among other claims by plaintiffs are that defendant was intoxicated and that defendant had knowingly and intentionally deactivated his hearing aid immediately before the accident, thereby increasing his difficulty in responding to external audible stimuli, an ability already impaired by consumption of alcoholic beverages. Ordinarily, as plaintiff was a police officer on duty and responding to a call for assistance at the time of the traffic accident, the Fireman's Rule would bar liability, but here the individual defendant's intoxication and deactivation of his hearing aid may bring the case within the wanton or willful misconduct exception to the Fireman's Rule, allowing this tort action to be maintained. *Miller v Bock*, 223 Mich App __; __ NW2d __ (No. 176855, April 22, 1997). Accordingly, the circuit court's order of summary disposition is vacated and the cause is remanded for reconsideration in light of *Miller v Bock*, which was unavailable when the circuit court adjudicated the summary disposition motion.

* Circuit judge, sitting on the Court of Appeals by assignment.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell